

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, May 15, 2009
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto
Honorable Eddward Ballinger
Honorable Patricia Escher - *telephonic*
Honorable Sue Hall
Mr. Josh Halversen
Mr. Tim Hardy

Honorable Michael Jeanes
Honorable Kenneth Lee
Honorable David Mackey
Honorable Stephen McCarville
Honorable Colleen McNally
Ms. JoJene Mills - *telephonic*
Mr. Phil Knox, proxy for Marcus
Reinkensmeyer
Honorable Stephen Villarreal
Ms. Susan Wilson

Honorable Charles Harrington
Honorable Danna Hendrix
Honorable Bethany Hicks
Honorable Cathy Holt

MEMBERS ABSENT:

Honorable Norman Davis
Honorable Robert Duber II
Honorable Richard S. Fields

Honorable George Foster
Honorable Andrew Gould
Honorable Margaret Maxwell

PRESENTERS/GUESTS:

Honorable Bruce Cohen - *telephonic*
Cindy Trimble, AOC
Ken Kung, AOC
Amy Love, AOC
Katy Proctor, AOC
Niki O'Keefe, AOC
Jim Price, AOC

Cindy Cook, AOC
Honorable Antonio Riojas
Jeremy Mussman
Mark Meltzer, AOC
Kathy Sekardi, AOC
Theresa Barrett, AOC

STAFF:

Ms. Kay Radwanski

Ms. Tama Reily

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the May 15, 2009, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, chair, at 10:05 a.m.

Judge Soto introduced Pima County Superior Court Judge Steven Villarreal, who, has attended previous meetings telephonically, and new member Joshua Halversen, who had attended his first meeting in February telephonically.

B. Approval of Minutes

The minutes of the February 27, 2009, COSC meeting were presented for approval.

MOTION: To approve the minutes of the February 27, 2009, COSC meeting as presented. Motion seconded. Approved unanimously.
COSC-09-010

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Update from the Child Support Guidelines Review Committee

Judge Bruce Cohen, chair of the Child Support Guidelines Review Committee (GRC), joined the meeting telephonically to present a report on the work of the GRC. He provided a summary of the proposed Child Support Guidelines and the expected timeline for completion of the committee's final product. The draft final report will become available within the next few weeks. Members were provided with the current draft at the meeting. Judge Cohen explained that the GRC is requesting that COSC establish a workgroup to do the following:

- 1) Review the GRC's "Draft Final Report and Recommendations" and offer its comments, input and feedback to the GRC, prior to the September COSC meeting.
- 2) Assist the GRC with broadcasting the report and directing stakeholders to the GRC comments website.
- 3) Provide recommendations to the GRC chair and staff regarding information to present in September that colleagues and fellow COSC members need in order to make an informed decision regarding the child support guidelines.

In response to member questions, Judge Cohen explained that the goal is for the proposed guidelines to establish a standard of support for children that is consistent with the reasonable needs of children. Where increases occur in the support award, factors like significant disparity of income have been considered. For those paying parents whose support amount does increase, there will be a phase-in period to allow for adjustment to the payment schedule. Ultimately, the development of the proposed guidelines was undertaken with the well-being of the children being paramount.

Judge Cohen offered to meet with family judges around the state once the draft version is completed in order to walk them through the guide and to gather some of their comments and insight. The GRC will present the final product before this committee in September. In the interim, Judge Cohen requested that COSC establish a workgroup to provide input prior to that meeting. Members interested in

participating in the workgroup were asked to contact Kay Radwanski at kradwanski@courts.az.gov.

B. Financial Advisory Workgroup

Cindy Trimble, acting manager, and Ken Kung, financial specialist, of the Court Services Division's Court Operations Unit addressed the committee on the formation of a Financial Advisory Workgroup to review the Minimum Accounting Standards (MAS). Since coming into use by the court community in January 2008, the current MAS appear to need some clarifications and technical corrections. Ms. Trimble stated they are seeking volunteers from COSC to participate on this workgroup. They would be working with Court Services staff. The goal is for the workgroup to have something prepared to go before the Arizona Judicial Council (AJC) in December 2009, so meetings need to start in the early part of June. Members who would like to assist on this workgroup were asked to contact either Kay Radwanski at kradwanski@courts.az.gov, or Cindy Trimble at Ctrimble@courts.az.gov.

C. ACJA § 6-209: Adult Probation Services to Limited Jurisdiction Courts

Dori Ege, manager in the Adult Probation Services Division, presented proposed ACJA Section 6-209: Adult Probation Services to Limited Jurisdiction Courts. The purpose of this section is to codify an existing practice affecting offenders sentenced in limited jurisdiction courts, who are then transferred to a superior court probation department for supervision. The code was passed by the Committee on Probation last week.

MOTION: To approve ACJA § 6-209: Adult Probation Services to Limited Jurisdiction Courts as presented. Motion seconded. Approved unanimously. COSC-09-011

D. H1N1 Resources for Courts

Niki O'Keeffe, director of the Administrative Services Division, addressed the committee on the status of the H1N1 flu. She discussed the challenges faced by the court community during an outbreak of this nature. She advised members the Public Health Bench Book is available online on the Wendell website. In addition, she provided the website address for Emergency Preparedness information (<http://supreme8/status/>), which gives information and numerous other resources regarding public health. Written materials on Pandemic Emergency Preparedness were provided.

E. Arizona TurboCourt Project

Jim Price, project manager in the Information Technology Division, and Cindy Cook, specialist in the Court Services Division Case Flow Management Unit, brought members up to date on the status of the E-filing project. Mr. Price discussed the development schedule and target dates for various courts to begin full E-filing. He also reported that Arizona's e-file site has been coined AzTurboCourt.gov. It will function similarly to the website of the Arizona Department of Transportation with

the main page linking users to functions like the child support calculator, e-filing, perhaps FARE, and so forth. He also noted that the E-court Policy Subcommittee has issued some policy decisions that can be viewed online at <http://www.supreme.state.az.us/eCourts/Documents.htm>.

Ms. Cook reported that the Committee on the Impact of Domestic Violence and the Courts (CIDVC) recently formed a workgroup to develop intelligent forms for e-filing of protection orders. She requested members provide their feedback or share any suggestions they have on e-forms by contacting her at Ccook@courts.az.gov.

F. Recommendations of the Criminal Rules Video-Conference Advisory Committee

Judge Antonio Riojas, chair of the Criminal Rules Video- Conference Advisory Committee (CRVAC), and Jeremy Mussman, deputy director, Maricopa County Public Defender, addressed the committee regarding proposed amendments to Rule 1.6, Arizona Rules of Criminal Procedure, which provides for appearances by defendants via videoconferencing in court proceedings. Judge Riojas noted that a majority of the committee supports the proposed amendments; however, a minority of the membership oppose the amendments. The minority view will be presented to COSC by Mr. Mussman.

Judge Riojas summarized the proposed amendments, explaining they would expand the use of videoconferencing in court proceedings, while upholding the rights of the defendant. Provisions were included to ensure adequacy of interactive audiovisual systems and availability of interpreter service and compliance with victims' rights laws. He stated that much of the debate in CRVAC centered on the inclusion of initial appearances under those cases in which appropriateness of videoconferencing would be determined by the courts. The majority concluded there would be no infringement upon the defendant's constitutional rights or that any injustice would result from conducting these proceedings by video.

Mr. Mussman related the minority's opposition, stating they believe the amendments are overly broad, premature, and highly vulnerable to legal challenge. Of primary concern is the disregard for the defendant's right to appear in court, where the proposal would give sole discretion to the court to determine whether videoconferencing will take place. The minority's view is that Rule 1.6 should permit the defendant to decide if he/she wishes to participate in any proceeding via videoconferencing. Another of the minority's concerns is that state-of-the-art videoconferencing technology is not available at present, and the current budgetary constraints prohibit significant funding for technological upgrades. Thus, the minority maintains that under the proposed rule, videoconferencing could consist of a laptop and a video camera in some courts.

Committee discussion revealed general support for the idea of videoconferencing in court proceedings; however, concerns were expressed by several members:

- The urgency with which the rule amendment is being pursued is uncalled for, especially in light of the lack of readiness and preparation.
- The scope of the proposal is too broad – and no other states using videoconferencing have a rule as broad as this.
- The equipment currently in place in most courts would not allow adequate communication for defense counsel and interpreter and the court. Confidential communication between defendant and counsel would be compromised.
- Technical standards and guidelines for the operation of such a system need to be developed prior to going forward with amendments to this rule.

Despite the concerns being voiced, comment was made that judicial discretion should be sufficient to make the determinations proposed by the amendments. A motion was then made to approve the majority proposal.

MOTION: To support the majority's proposed amendments to Rule 1.6 Arizona Rules of Criminal Procedure, except that the committee's support shall not be construed as an advisory opinion with respect to any legal challenges that may come before the court, or that are presently pending before the court; rather the support of the committee reflects its support of efficiency and convenience within the confines of applicable law. Motion seconded. Vote: 5:12:1. Motion failed. COSC-09-012

G. Legislative Report

Katy Proctor, legislative officer, and Amy Love, legislative liaison for the AOC, briefed the committee on legislation impacting the superior courts. Ms. Proctor reported that the Senate is still not hearing bills, as they are waiting for the FY10 budget to be resolved. Therefore, only a few bills have come out of the process.

HB2374: CHILD PROTECTIVE SERVICES WORKERS S/E SAME SUBJECT

Authorizes CPS to take a child into temporary custody when there are reasonable grounds to believe the child is the victim of criminal conduct. The child in temporary custody must not be asked to make a statement relating to the incident before any charges have been filed. This bill raised concerns because of the way it was drafted, which implied that the child could be prohibited from speaking with a judge or a court. Ms. Proctor said discussions are ongoing at this time to try to develop a new draft.

SB1106: DOMESTIC VIOLENCE; CHILD CUSTODY

Authorizes a court granting custody of a child to not consider which of the parents is more likely to allow the child continuing contact with the other parent only if the court determines that one parent is acting in good faith to protect the child from domestic violence or child abuse. There have been concerns on this bill from the family law bench, again because of the way the bill was drafted. It would require

written finding of fact on any evidence introduced alleging domestic violence abuse. Since in these cases many of the litigants are pro per, the process can be severely delayed. The Arizona Coalition Against Domestic Violence and Judge McNally have assisted in the rewriting of this bill.

H. Parenting Plans Workgroup

Judge Colleen McNally, chair of the workgroup, updated the committee on the progress of the Parenting Plans guide. She pointed out that they have changed the title of the guide to *Planning for Parenting Time: Arizona's Guide for Parents Living Apart*. She explained that work on the guide is nearly complete; however, there are some changes still in progress. Judge McNally asked for approval from COSC so the guide can go forward to the AJC June 2009 meeting to be approved *in concept* and so the workgroup can continue with the final revisions. This also would allow for information used in the guide to also be integrated into the TurboCourt e-filing project.

MOTION: To approve in concept the *Planning for Parenting Time: Arizona's Guide for Parents Living Apart* booklet in concept. Motion seconded. Approved unanimously. COSC-09-013

I. Strategic Agenda Planning

Theresa Barrett, manager, and Kay Radwanski, specialist, in the Court Services Division's Court Programs Unit, addressed the committee on the planning of the new strategic agenda for 2010 - 2015. Ms. Barrett provided information on the planning process and the role that AJC standing committees play in the development of the new agenda. Ms. Barrett reviewed some of the new initiatives that were proposed at the March 2009 AJC meeting, as well as some statistics on case filing trends and other information affecting the courts. Ms. Radwanski reviewed the features and demonstrated the registration process on the new Arizona Judicial Branch Strategic Agenda Planning Collaboration Tools website (www.sp2010.courts.az.gov), which has been set up to allow members to participate in and follow the progress of the new strategic agenda.

COSC was asked to consider using the remainder of the meeting time or establish a workgroup to discuss and amass potential initiative ideas for the new agenda. The deadline for providing the committee's suggestions is August 1, 2009, to allow time for the finalized agenda to be completed and presented at the AJC October 2009 meeting. After some discussion, the committee determined to hold a conference call in June or July with as many members as can join in at the time to discuss possible initiatives. Members were asked to review the information on the website before joining the call to be familiar with projects already on tap or those that have already been proposed, in order to have a more productive meeting.

III. OTHER BUSINESS

Judge Soto announced that this will be the last meeting for Judge Patricia Escher, who has served on the committee since 2002. She was thanked for her time

and service to the committee. Judge George Foster's term also expires on June 30, 2009, and he did not seek reappointment.

A. Next Meeting:

Friday, September 25, 2009
10:00 a.m. – 3:00 p.m.
Conference Room 119 A/B
Arizona State Courts Building
1501 W. Washington
Phoenix, Ariz.

B. Good of the Order/Call to the Public

No comments were offered.

The meeting was adjourned at 1:45 p.m.